

APPENDIX C
List of Commenters
Public Comment Period Ending February 26, 2001
R-40-00

1. Randy Cullen, randyc@scwa.ca.gov, 8 JAN 01.
2. Roger Swartfager, (by FAX), 19 JAN 01.
3. Dave N. Commons, City of Redlands, 23 JAN 01.
4. Fran Forkas, City of Lodi, 12 FEB 01.
5. Richard C. Prima, Jr., City of Lodi, (with letter from Frank Beeler as attachment), 13 FEB 01.
6. John Hills, City of Anaheim, 22 FEB 01.
7. Lynne Shockey, Western Manufactured Housing Communities Association, lynne@wma.org, 23 FEB 01.
8. Larry Burch, Cresta Mesa Parque Water Company, 23 FEB 01.
9. Larry Gardner, City of San Diego, 26 FEB 01.
10. Mary Hoang, (for Mansour Nasser), Mary.Hoang@ci.sj.ca.us, San Jose Municipal Water System, 26 FEB 01. (Also received by FAX, also presented similar comments orally at public hearing.)
11. Paul R. Dolter, East Valley Water District, pdolter@earthlink.net, 26 FEB 01.
12. David Quinones (for Andrew DeGraca), San Francisco Public Utilities Commission, dquinone@puc.sf.ca.us, 26 FEB 01.
13. Gayle Smalley, North Marin Water District, gsmalley@nmwd.com, 26 FEB 01.
14. Gary Erbeck, California Conference of Directors of Environmental Health, 26 FEB 01.
15. Kenneth C. Stuart, California Conference of Directors of Environmental Health, 20 FEB 01 (received 26 FEB 01).
16. Ronnean Lund, rlund@co.humboldt.ca.us, 26 FEB 01.
17. Jesse Ballesteros, Jimmy Evans, Stuart Karasik, Nick Kanetis, John Kirk, Mark Stone, City of San Diego, coordinated oral comments presented at public hearing (also provided written comments identified as commenter 9).
18. Sheila Dey, Western Manufactured Housing Communities Association, oral comments presented at public hearing (also provided a comment letter identical to commenter 7).
19. Darcy Burke, California-Nevada Section of the American Water Works Association, oral comments presented at public hearing.
20. Bruce Davis, oral comments presented at public hearing.

**Response to Public Comments on R-35-99
Period Closing February 26, 2001**

The responses to public comments are organized under the following headings:

- Certification criteria
- Treatment facility and distribution system classification criteria
- Training issues
- Transition issues
- Distribution certification issues
- Fiscal issues
- General

Certification Criteria:

COMMENT: Commenter 2 believes that the 2 years of supervisory experience that was a requirement to become certified at the grade 5 level under the previous regulations should continue to be a requirement of the new regulations.

RESPONSE: The Department and the TAC disagree with the commenter. This issue was discussed at great length and it was determined that many newer treatment technologies and facilities can operate with just a single operator, therefore it was concluded that supervisory experience is not a necessity for obtaining a T5 certificate.

COMMENT: Commenter 3 recommends changing section 63800(f)(2) to allow “**an equivalent Bachelors degree with an approved major**” as a substitute for 1.5 years of experience. Similarly, the commenter recommends changing section 63800(f)(3) to allow “**an equivalent Masters degree with an approved major**” as a substitute for 2 years of experience.

RESPONSE: The language proposed by the commenter is vague and does not meet the standards of clarity required of regulatory language. The terms “equivalent” and “approved” are difficult if not impossible to interpret in a regulatory context. The purpose of the regulation is to clearly present the standards for the regulated community. The language proposed by the commenter leaves the reader wondering what an “equivalent degree” or “approved major” might be. The regulatory language very clearly and intentionally defines what degrees and majors are acceptable. The TAC and the Department discussed this issue and concluded that the requirements specified in the regulation were appropriate.

COMMENT: Commenter 3 recommends that section 63800(h) be amended to allow applicants who have an “**equivalent bachelor of arts or an equivalent master of arts degree**” to complete a comprehensive operator training program.

RESPONSE: The term “equivalent” does not meet the standard of clarity required of regulatory language. Additionally, the TAC and the Department considered this issue during the development of the regulation and intentionally excluded the bachelor and master of arts degrees from consideration for this particular program, on the basis that such programs are not equivalent to the “science” degrees.

COMMENT: Commenter 3 recommends adding language to section 63800(h) that would allow the training program to be at least 6 months “**or 1040 hours**” in duration. The commenter’s point being that this would allow a utility to provide the training on a half-time basis for one year, thereby providing the equivalent amount of training as a six month full-time program.

RESPONSE: The commenter’s objective can be met with the existing regulatory language. No additional revisions are necessary. The language states that the training program must be **at least** 6 months in duration. A 12-month half-time program would meet both the intent of the language as well as the strict letter of the language, since it would be **at least** 6 months in duration.

COMMENT: With regard to sections 63780(d), (e), and (f), commenter 6 believes that there may be more important training issues for distribution operators than “water supply principles,” such as actual operational techniques. The commenter requests that the language be changed from requiring “at least x courses in water supply principles” to “training that includes up to x courses in water supply principles.”

RESPONSE: The Department and the TAC believe that the required number of courses in “water supply principles” provides a foundation upon which other training can be based. The Department and the TAC intentionally framed this language to require a minimum number of courses in water supply principles. The language proposed by the commenter would essentially remove any requirement for obtaining the basic foundation courses in water supply principles. The Department and the TAC do not find this proposal acceptable.

COMMENT: Commenter 12 states that Professional Engineers (P.E.s) with valve, pump, tank, pipeline, appurtenance, and hydraulics experience have transferable skills suitable for duties as distribution or treatment operators, and that Section 63800(c) and 63805(c) should allow a partial experience credit for P.E.s that can demonstrate experience with valves, pumps, tanks, pipelines, appurtenances, and hydraulics.

RESPONSE: The Department and the TAC intentionally eliminated the P.E. experience credit because obtaining a P.E. does not necessarily have anything to do with the operation of a water treatment or distribution facility. Although the commenter makes a valid point that a P.E. may have transferable skills, there is nothing inherent in obtaining the P.E. that gives the individual those skills. Other individuals who do not have a P.E. may have similar experiences that would be just as relevant. The commenter does not indicate how a P.E. would “demonstrate” the appropriate experience. Such a vague regulatory provision would make implementation difficult. Additionally, the TAC and

the Department very specifically wanted to require more actual “hands-on” operating experience, and the P.E. substitution is not compatible with that intent. The Department will not make any change to the regulation as a result of this comment.

COMMENT: Commenter 12 suggests that a bachelor or master’s degree should suffice for the specialized training as the coursework for these college degrees covers water treatment principles and issues in far greater technical detail than the city college-approved specialized training.

RESPONSE: Water treatment and related water courses are not a requirement of all college degree programs, not even those in Civil or Environmental engineering. Granting credit for the specialized training to anybody who has completed a bachelor or master’s degree is not appropriate. The Department will grant specialized training credits for courses that have been completed as a part of a degree program if those courses meet the definition of specialized training.

COMMENT: Commenter 16 holds an engineering degree and a T2 certificate and works for a local County Health Department. The commenter is responsible for researching and resolving problems for small water systems and indicates that doing this on a daily basis for a number of years makes her a water treatment expert, yet she will be ineligible to obtain a T3 certificate. The commenter makes a similar argument for contractors who install, upgrade, and maintain water treatment systems, indicating that they are required to solve treatment problems on a daily basis and that these operators, after a number of years of experience in the field, should also be eligible for T3 certification after successful completion of the T3 exam. The commenter requests that there be a way of taking relevant expertise into account for purposes of certification.

RESPONSE: The TAC and the Department wanted operators applying for certification at the T3 and higher levels to have actual hands-on experience operating treatment facilities. The TAC and the Department included Section 63800(g) specifically to give credit for experience such as that cited by the commenter. However, in addition to that experience, the regulations intentionally require a minimum amount of hands-on operating experience that cannot be substituted. The regulation does allow operators with experience such as that cited by the commenter to apply for and take the T3 exam. The successful completion of the exam does not in itself make the operator eligible for certification at the T3 level, but it does demonstrate to potential employers that the operator is only lacking the actual experience, and once that experience is gained certification is possible.

Treatment Facility and Distribution System Classification Criteria:

COMMENT: Commenters 4 & 5 state that the population factor in the classification of distribution systems is arbitrary and too heavily weighted. The commenters use their own system, serving a population of 58,000 people, as an example of a very simple distribution system that has been “over classified” based solely on the population served.

Additionally, the commenters disagree with the Department's statement in the Initial Statement of Reasons that "system complexity generally increases as the population served increases."

RESPONSE: The Department and the TAC spent many hours developing the classification system for distribution systems. Both the Department and the TAC believe that the single most important factor in classifying a distribution system is the population served. In implementing the EPA mandated operator certification program, some states have chosen to base distribution system classification solely on population served. The Department has elected to include complicating factors in the classification, but intentionally bases the primary classification on population served. Again, every effort was made by the TAC and the Department to develop a fair and appropriate classification system. Based on the limited number of adverse comments, the Department believes the classification system presented in the regulation is fair and appropriate. Additionally, the Department continues to believe that system complexity does *generally* increase as the population served increases.

COMMENT: Commenter 5 suggests that the D3 classification be extended from the population of 50,000 to the population of 250,000, and that the complexity factors be more heavily weighted.

RESPONSE: The Department and the TAC spent many hours developing the classification system for distribution systems. Both the Department and the TAC believe that the single most important factor in classifying a distribution system is the population served. Every effort was made by the TAC and the Department to develop a fair and appropriate classification system. Based on the limited number of adverse comments, the Department believes the classification system presented in the regulation is fair and appropriate.

COMMENT: Commenter 11 believes that the local DHS field operation branch has incorrectly interpreted the regulation by combining all treatment facilities within its system and summing all points from those multiple facilities to calculate a single classification for the system. The commenter states that classification and certification requirements are based on each treatment facility. Additionally, the commenter refers to language in section 64413.5 that states "...for each water treatment facility utilized by the water system." The commenter requests that the correct interpretation be confirmed with all DHS field offices.

RESPONSE: The Department agrees with the commenter that treatment facilities are to be classified independently, and that classification and certification requirements are based on each individual facility, not a summation of all facilities. The Department will verify this with all DHS field offices.

COMMENT: Commenter 11 states that medium sized water systems were not represented on the Technical Advisory Committee (TAC), and that many medium-sized

water agencies will now be required to jump from staff certifications at the T3 and D3 levels to the T5 and D5 levels.

RESPONSE: An effort was made to include all stakeholders in the process, and the TAC did include representatives from the California Water Agency (CWA), which represents investor owned utilities in California. Investor owned utilities make up approximately 20% of all water suppliers in California, and they consist of small, medium, and large systems. The CWA was very active in the TAC and did a very good job of representing its constituency. In addition, all TAC participants were aware of the effects on all sized systems and made every effort to consider those systems. The Department and the TAC worked very hard to develop a classification system that would not require more than a one-level increase in Chief operator classification at any treatment facilities. The fact that the commenter's system increased by 2 levels is a result of the erroneous interpretation made by the field office. This error will be corrected, and as previously indicated the correct interpretation will be verified with all DHS field offices

COMMENT: Commenter 11 does not believe that the classification criteria for distribution systems is fair for D3 and D4 systems. The commenter does not believe that a water agency serving 50,000 people is comparable to a system serving 5 million people. The commenter believes this unfairness occurred because the medium-sized agencies were not represented on the TAC. The commenter proposes that the D3 range should go from 10,001 to 500,000 and the D4 range should be 500,001 to 5 million.

RESPONSE: The Department and the TAC spent many hours developing the classification system for distribution systems. Both the Department and the TAC believe that the single most important factor in classifying a distribution system is the population served. Every effort was made by the TAC and the Department to develop a fair and appropriate classification system. Based on the limited number of adverse comments, the Department believes the classification system presented in the regulation is fair and appropriate. Additionally, all sized systems were represented on the TAC.

COMMENT: Commenter 11 believes that section 64413.3(b) is biased against medium sized systems and that the point cut-off for upgrading one level should be 24 points rather than 20 points.

RESPONSE: The Department and the TAC spent many hours developing the classification system for distribution systems. Every effort was made by the TAC and the Department to develop a fair and appropriate classification system. Based on the limited number of adverse comments, the Department believes the classification system presented in the regulation is fair and appropriate.

COMMENT: Commenter 11 believes that the points assigned in section 64413.3(b)(2) are biased against medium sized systems and that the point values should be adjusted to be consistent with other criteria.

RESPONSE: The Department and the TAC spent many hours developing the classification system for distribution systems. Every effort was made by the TAC and the Department to develop a fair and appropriate classification system. Based on the limited number of adverse comments, the Department believes the classification system presented in the regulation is fair and appropriate.

COMMENT: Commenter 12 indicates that as a result of this regulation the operator responsible for the treatment facility will be required to upgrade their treatment operator certificate. The commenter suggests that the DHS revise system classification criteria to only require an upgraded certification in unique circumstances.

RESPONSE: This is the first time treatment facility classifications have been specified in the regulations. The previous regulations specified the required operator certification levels based solely on rated capacity of the facility, but the facility itself was not classified. The Department and the TAC, as well as the EPA, believe that many factors must be taken into consideration when classifying a treatment facility. The new regulation takes as many of these factors as possible into consideration and the Department and the TAC very carefully considered the weighting of all factors. If the facility classification requires upgraded operator certification under the new regulations the Department believes it is justified. The commenter's reference to "unique circumstances" is unclear. The Department does not believe a change in the regulations is justified based on this comment.

Training Issues

COMMENT: Commenter 6 believes that all trainers and training programs offering specialized training that had been approved under the previous regulations should be "grandfathered" per the previous agreements and allowed to continue training under the new regulations.

RESPONSE: The previous regulations were very vague with regard to the requirements of specialized training. The language used in the old regulation referred to "acceptable courses of instruction in water treatment." This type of language does not meet the standard of clarity required of present regulatory language. Additionally, no formal "previous agreements," as the commenter referred to them, exist with regard to what courses were acceptable under the old regulations. The TAC and the Department decided that courses that were previously accepted by the Department for the purpose of an individual operator's certification, would continue to be acceptable under the new regulation on an operator specific basis, and this is reflected in the definition of "specialized training." However, it is the intent of the TAC and the Department that all courses currently being offered must meet the standards specified in the regulation in order to be given credit for the purpose of operator certification. The TAC and the Department believe that these standards are appropriate.

COMMENT: Commenters 7 and 18 request that the Department pursue the possibility of providing continuing education courses over the Internet. The commenters state that this would be a convenient, cost effective way of dealing with the increased educational requirements.

RESPONSE: Although it is not likely that the Department would provide such courses, private trainers are already providing such courses over the Internet. The Department agrees that such training is both convenient and cost effective.

COMMENT: Commenter 12 states that there are no approved specialized training facilities listed for the San Francisco Bay Area. The commenter indicates that the only option Bay Area operators is to take the single approved correspondence course for 3 units and commute to take 6 units elsewhere. The commenter encourages DHS to help develop an approved Bay Area training facility.

RESPONSE: The Department supports the development of training facilities throughout the state; however, it is not the Department's responsibility to develop such facilities. The TAC and the Department believe that as the demand for training increases, appropriate training facilities and courses will be developed to meet the demand.

COMMENT: Commenter 13 states that tracking in-house training by the multitude of utilities will be a regulatory nightmare and the commenter predicts that in the future only state sanctioned (pre-approved) training will meet the continuing education contact hour requirements.

RESPONSE: The Department does not intend to track in-house training offered by utilities. If it is determined in the future that the regulatory framework is insufficient for the purposes of monitoring continuing education contact hours, any revisions will be made with the participation and cooperation of the stakeholders group, and such revisions will again be subject to public comment.

COMMENT: Commenter 13 suggests that one full quarter of class work should meet the requirements for the highest certification continuing education contact hours.

RESPONSE: It is not clear what the commenter means by "one full quarter of class work". The most continuing education contact hours required in any renewal period is 36 hours. A 3 quarter unit course typically consists of 30 hours of class time, and thus the operator would be given credit for 30 hours of continuing education for the completion of a single 3 quarter unit course. If the operator completes two such courses the operator would be given 60 hours of credit. A 3 semester unit course typically consists of 45 hours of class time and would therefore be given credit for 45 contact hours. Quarter classes and semester classes are not equivalent. The Department and the TAC believe that such courses should be given credit based on the number of hours of class time. Simply stating that completion of one college level course should fulfill all the continuing education requirements is not appropriate.

Transition Issues:

COMMENT: Commenter 1 is a T3 Chief treatment operator at a treatment facility that previously only required a T3 Chief and that under the new regulation will be required to have a T5 Chief operator. The commenter won't have enough time to proceed to the T5 level by 1/1/2003 and therefore requests that the date specified in Section 64413.5(e) be extended to 1/1/2007.

RESPONSE: The Department and the TAC worked very hard to develop a classification system that would not require more than a one-level increase in Chief operator classification. In this particular case, the commenter's treatment facility should have been operating with a grade 5 Chief Operator under the previous regulations. It was an oversight by the Department that allowed the system to operate with a grade 3 Chief Operator. This was an isolated incident and was not the fault of the water supplier. The Department's Field Operations Branch and Certification Unit will work together to provide an administrative solution for this particular water supplier and its operators. Since this was a unique situation, no changes to the regulatory language are necessary.

COMMENT: Commenters 7 and 18 are concerned that only employees of distribution systems are eligible for interim certification and that independent contractors are not. The commenters believe that this poses a serious problem for small water systems currently retaining independent contractors to provide water-testing services.

RESPONSE: The commenters appear to be unaware of the "temporary certification" provisions of the regulation. The regulatory language intentionally limited the interim certification provisions to "employees" of water systems and excluded outside contractors since the interim certification is a partnership between an "employee" and the employer. The Department and the TAC believe that private contractors should maintain their own certifications. However, this will not cause a problem for small communities hiring outside contractors, since temporary D1 certificates will be available by mid-2001 and the contractor simply needs to apply for it.

COMMENT: Commenters 9 and 17 recommend that employees who possess the Interim Water Distribution Operator D2 certification be allowed to meet the minimum requirements for receiving a Temporary Water Distribution Operator D3 certification. The commenters provide several specific methods for accomplishing this, including: 1) the offering of exams on a quarterly basis for the first 3 years, 2) allowing Interim D2 operators to take the D3 exam and obtain the D3 certification, and 3) the allowance of a one level of certification upgrade for operators based on professional responsibilities.

RESPONSE: The first recommendation, that exams be offered on a quarterly basis, is beyond the scope of the regulation. The regulation specifies the requirements of the operator certification program. The regulation does not specify the number of exams that will be offered in any particular year. This is an administrative function and it is not specified by the regulations. The commenters' other two proposals do not comply with

the EPA requirements. EPA requirements do not provide for “upgrading” of interim certificates based on “professional responsibilities” after the point at which the regulations went into effect. It is up to the water supplier to designate the level of interim certification each operator should be given. The Department only limits certification to the level of the system (i.e., a D3 system could not obtain interim certificates at the D4 or D5 level).

COMMENT: Commenter 10 indicates that the Interim and Temporary Certification provisions are insufficient for allowing water utilities to promote and hire qualified operators during the transition period. The commenter indicates that it expects to lose at least 30% of its Operations and Maintenance staff within the next year and that chief and shift operator positions will become vacant. The commenter indicates that existing staff will not be able to promote to those positions because they will hold interim certificates at levels less than those required for chief or shift operator, pursuant to guidance provided by DHS staff. The commenter requests that water utilities be allowed to issue interim certification at grade levels reflective of the individual’s responsibility and years of experience without affecting the classification of the position for future employees.

RESPONSE: The regulation does not specify at what level interim operators are to be certified. This is a decision that is left to the water supplier, and the Department hopes that the supplier does take years of experience and level of responsibility into consideration when making that decision.

COMMENT: Commenter 10 requests that one year Temporary Certifications be granted after January 1, 2004 so that water suppliers can hire individuals who are qualified to take an operator exam but have not yet taken one. The commenter believes that even in the future the pool of certified operators may be limited, and this would expand the number of individuals qualified to fill positions.

RESPONSE: Although the Department is concerned that there be an adequate pool of certified operators, the Department does not believe that extending the Temporary Certification provision beyond the 3 year transition period is in the best interest of public health. Additionally, such a provision, allowing individuals who have not taken an exam to operate a distribution system after the “transition period”, is prohibited by the EPA requirements.

COMMENT: Commenter 12 states that they don’t know at what level to grandparent individuals who are on eligibility lists for advancement. Additionally, the commenter suggests that newly promoted distribution operators need a three-year grace period to bring their certification up to the appropriate level. The commenter states that this would enable competition for promotions.

RESPONSE: The level at which operators are to be grandparented is a decision that the water supplier must make, based on the level of knowledge, experience, and ability of those operators. The Department cannot make those determinations for the water supplier. The Department and the TAC believe that newly promoted operators should

have the appropriate certification prior to being promoted. Operators should be encouraged to obtain higher levels of certification, and as a result be eligible for promotional opportunities.

COMMENT: Commenter 12 suggests that if an upgraded operator certification is required as the result of treatment facility classification under the new regulations, the treatment operators should be given a three-year grace period to prepare for the exam and gain the necessary experience for certification at the appropriate level.

RESPONSE: Section 64413.5(e) essentially provides such operators with a two-year “grace period.” The Department and the TAC carefully considered this provision and determined that two years would be sufficient time for an operator to upgrade their certificate by one level.

COMMENT: Commenter 17 is concerned that the exams will be difficult to pass for existing operators who have years of experience but that haven’t had to take an exam for many years.

RESPONSE: The Department and the TAC were sensitive to this issue and again, it is believed that the Temporary Certification and Interim Certification provisions adequately address this concern. Under both provisions, immediate passage of the exam is not required, thereby allowing the operator to take the exam numerous times, if necessary.

COMMENT: Commenter 17 stated that the regulation will create a shortage of certified workers. The commenter indicates that through attrition the water supplier will lose certified operators and appropriately certified replacement operators will not be available.

RESPONSE: The Department and the TAC included the Temporary Certification provisions of Section 63820 specifically to address this issue during the transition period. The commenter apparently was not aware of this section of the regulation. The Department does not believe additional changes to the regulation are necessary to address this issue.

Distribution Certification Issues:

COMMENT: Commenter 6 believes that the requirements of section 63770(d)(2), requiring systems to utilize certified distribution or treatment operators to make decisions addressing water quality investigations, are overly broad. The commenter interprets this to mean that non-certified, yet highly educated and experienced individuals, would be prohibited from taking part in such investigations. The commenter suggests that the regulation should only require that a certified individual certify the results of a water quality investigation.

RESPONSE: The TAC and the Department believe that the individuals who are making the decisions addressing a water quality investigation should be certified. That does not

mean that non-certified individuals cannot be involved and play important roles in the investigations. These non-certified, yet highly qualified individuals, may provide technical expertise and advice to the certified individuals who will be making the decisions. The Department does not believe a change in the regulatory language is necessary to allow the participation of highly qualified but non-certified individuals.

COMMENT: Commenters 7, 18, and 20 state that mobile home parks and manufactured housing communities are small businesses providing affordable housing and that these regulations will have a significant fiscal impact on the operations of these communities and in turn will impact the cost of housing. The commenters request that the language be amended to make it clear that manufactured housing communities and mobile home parks designated as D1 distribution systems are permitted to designate a third party (i.e., an independent contractor) as the Chief operator.

RESPONSE: The commenters make this statement based on the interpretation that these communities will be required to maintain an “on-site employee.” This is a complete misinterpretation of the regulation. Section 64413.7(a) simply requires that a chief operator be designated for each distribution system. There is nothing requiring this person to be an “employee” as opposed to a “private contractor.” In fact, it is a common and acceptable practice for small systems such as these to contract with “circuit riders” that maintain numerous small systems. The Department and the TAC believe that this intent is clear in the regulations and there is no need to incorporate the amendment proposed by the commenter. Additionally, the Department does not believe that this regulation will have an impact on small businesses or the cost of housing. The assertion that such impacts would occur was based on an erroneous reading of the regulation.

COMMENT: Commenters 8 and 20 make similar comments, stating that the requirement of having to hire a certified water distribution operator would place an unnecessary economic hardship on a small system serving only 14 homes, and that the requiring an “on-site” employee is extreme.

RESPONSE: It is not necessary for the small system to “hire” a certified distribution operator. The system does need to “designate” a certified distribution operator who will be available on an “on-call” basis should a need arise, however, this operator does not need to be “on-site” at all times. The Department does not believe that this will present an economic hardship.

COMMENT: Commenter 8 enquires as to whether or not there is a waiver provision for small systems such as the one serving the commenter. The commenter believes there is no need for a certified distribution operator on a simple community water system serving fewer than 15 homes.

RESPONSE: There is no waiver provision in the regulation. These regulations were adopted in order to meet minimum operator certification requirements specified by the United States Environmental Protection Agency (EPA). The EPA requirements specifically included all community water systems and did not allow for the use of

waivers. However, the regulations do not require the full-time employment of a certified operator, only that a certified Chief operator be designated for the system and that the operator make certain decisions regarding the system. The commenter's system would be classified as a D1 system, and as such could be operated by a D1 operator. If the customers of the system do not wish to designate an appropriately certified contractor as their Chief operator, a customer of the system could obtain a D1 certificate and be designated as the Chief operator.

COMMENT: Commenter 8 enquires about the availability of certified operators in the geographical area of the commenter's system, and also asks whether or not the certified operator must be employed by the water system, or if they can work for a contractor.

RESPONSE: The Department believes that private contractors that offer professional services to drinking water utilities will obtain the required certifications, as a service for their customers. The regulation does not require that the certified operator be employed by the system. Certified operators may work for private contractors.

COMMENT: Commenter 8 enquires as to how many other nontransient noncommunity (NTNC) water systems there are in the State that will be required to hire a certified distribution operator and how they will comply with the regulation.

RESPONSE: The commenter represents a community water system, not a NTNC water system. As required by the EPA requirements, all community water systems are affected by the regulation and will need to comply with it. However, the commenter appears to have misinterpreted the requirements of the regulation. The system only needs to designate Chief and Shift operators that will be available in case their services are needed. This can be accomplished through a service contract with an appropriately certified contractor. The system is not required to hire an operator.

COMMENT: Commenter 8 asks whether or not a pump maintenance company needs to have a certified distribution operator to work on the pump and well.

RESPONSE: The person making decisions addressing the maintenance and operation of the pump and well does need to be certified. This person does not necessarily need to be employed by the pump maintenance company.

COMMENT: Commenter 12 suggests that either treatment or distribution operators should be permitted to perform disinfections of pipelines, tanks, appurtenances, and wells. Commenter specifically suggests that the word "disinfect" be deleted in Sections 63770(b)(1), (2), (4) and (6) and that two additional provisions be added to Section 63770(d) which would allow treatment operators to perform those disinfections.

RESPONSE: The treatment operators can perform those activities specified by the commenter, but a certified distribution operator must make all decisions regarding such activities. The TAC and the Department carefully considered which operators could be

responsible for which actions, and the Department believes that the regulatory language is appropriate without further amendments.

COMMENT: Commenter 12 states that the regulations should be modified to exempt AWWA-certified Backflow Testers and Backflow Prevention Specialists from distribution operator certification if this is their sole job duty.

RESPONSE: Since backflow prevention devices are typically placed on customer service lines after the customer's meter they are not considered a part of the distribution system. Individuals performing inspections or maintenance on such devices located on a customer's service line would not be required to hold a distribution operator certificate. However, the TAC and the Department do not believe that AWWA backflow device certification should permit an individual to make decisions addressing distribution system activities.

COMMENT: Commenter 12 states that AWWA-certified Backflow Prevention Specialists are qualified to investigate water quality problems in the distribution system, and that Section 63770 should be modified to allow these individuals to conduct such investigations without an additional operator certification.

RESPONSE: The Department and the California-Nevada section of the AWWA do not agree with the commenter's assertion that AWWA-certified Backflow Prevention Specialists are qualified to investigate water quality problems in the distribution system. The Department does not believe it would be appropriate to modify Section 63770 in response to this comment.

COMMENT: Commenter 13 states that there is no justification provided in the "Statement of Reasons" for the requirement that employees assigned to investigating water quality "problems" in the distribution system be certified. The commenter states that laboratory personnel are capable of testing water and investigating customer complaints, and that the lab staff who collect samples, analyze samples, and report on the problem, do not need to be certified. The commenter states that such certification is an extra burden that is not appropriate. Additionally, the commenter states that water quality complaints are related to a wide range of causes and that neither the distribution nor treatment operator exams will include issues related to complaint investigation. The commenter requests that paragraph 63770(d)(2) be deleted.

RESPONSE: The regulation does not require that the person collecting or analyzing samples related to a water quality complaint be certified. The person "**making decisions**" that address the investigation of water quality problems does need to be certified, and a justification for that requirement is provided in the statement of reasons. A certified individual must direct the investigation by **making decisions** about **where** and **when** to collect samples and **what** analyses to conduct on the samples. It is not necessary for the individual **collecting** the samples and **conducting the analyses** to be certified. The Department and the TAC believe that requiring certification of the individual "making decisions" addressing a water quality investigation is justified. The

individual making those decisions must have a fundamental understanding of the system and the process, as well as the source water and treatment employed, in order to conduct a meaningful investigation.

COMMENT: Commenter 13 suggests that if the Department does not delete paragraph 63770(d)(2), then customer complaints should not be considered a water quality “problem” until they have been investigated and deterioration of quality has been confirmed.

RESPONSE: Again, it must be emphasized that the regulation only requires certification of operators “**making decisions**” addressing water quality problems. If the water supplier’s standard practice upon receipt of a complaint is to send out a technician to collect a sample from the complainant’s tap and to analyze that sample for predetermined analytes, no decisions are being made. A procedure, presumably reviewed and approved by an appropriately certified operator, is simply being followed. The decisions have been pre-determined by the procedure. The persons collecting and analyzing the sample do not need to have a treatment or distribution certification since they are not making decisions. With this explanation in mind, the Department believes the commenter’s concern is addressed.

Fiscal Issues:

COMMENT: Commenter 10 believes there may be a greater financial impact than specified in the fiscal analysis. The commenter indicates that operators may seek pay increases because of the additional requirements, and that utilities may need to increase compensation in order to hire and retain distribution operators.

RESPONSE: It is true that operators **may** seek pay raises as a result of needing to be certified. However, this is only a possibility and the regulation does not directly require utilities to increase the compensation of certified operators. Therefore this is not a direct cost of the regulation. It may be a secondary cost of the regulation, but even so it is nearly impossible to estimate and would be pure speculation.

COMMENT: Commenter 11 believes that the average annual cost per operator to comply with these regulations has been understated in the Fiscal Impact Estimate. The commenter is particularly concerned about the high costs of courses, referencing an AWWA course that costs \$800 per operator.

RESPONSE: The Department agrees that there are a wide variety of variables that will affect the cost on any individual operator, and that these variables make it very difficult to estimate an average cost per operator. The Department’s calculations were based on a variety of simplifying assumptions. The AWWA course referenced by the commenter is an extremely unusual case, and in most cases the Department believes that continuing education will cost operators between \$0 and \$15 per contact hour.

COMMENT: In contrast to the \$68 per operator that the Department estimated, commenter 12 estimates that the annual costs of the regulation will be at least \$100 per operator for fees, training, and substitute pay.

RESPONSE: The Department agrees that there are a wide variety of variables that will affect the cost on any individual operator, and that these variables make it very difficult to estimate an average cost per operator. The cost per operator will vary significantly depending on the operator's certification level, the size of the water system, etc. The Department's calculations were based on a variety of simplifying assumptions. It is very possible that the costs cited by the commenter are realistic for the commenter's specific system.

General

COMMENT: Commenter 6 believes that sections 63775 and 63800 contain much of the same information and that they should be combined into one section in order to simplify the regulation. The commenter also believes that sections 63780 and 63805 should be combined for the same reason.

RESPONSE: The Department disagrees with the commenter. The Department spent a great deal of time assembling these regulations and analyzing a multitude of different possible arrangements. After review by many people from many different organizations, it was determined that the current format and arrangement is the most simple and easy to understand arrangement.

COMMENT: Commenter 6 recommends that sections 64413.1 and 64413.3 be developed into simple one-page tables to allow easy determination of distribution and system classifications.

RESPONSE: The Department agrees that it would have been nice to develop a simple table, however, such a table does not lend itself well to regulatory language format. After numerous drafts, it was determined that the sections were best presented in the current format.

COMMENT: Commenter 6 states that section 63810 defines many of the compliance dates for this regulation, including a retroactive effective date of January 1, 2001. The commenter believes that it is unfair to make this regulation retroactive, and that the effective date should be the date that the regulation is approved.

RESPONSE: The effective date of January 1, 2001, is not a retroactive date. The regulation was approved and became effective on January 1, 2001 as an emergency regulation. The commenter may be unclear as to the emergency regulation process. The regulation has been "approved" and adopted. The Department does not intend to change the effective date of the regulation and believes that the date of January 1, 2001 is fair.

COMMENT: Commenter 12 states that the regulations do not address the operator certification requirements for the treated water portion of the transmission system of a regional water supplier. The commenter further states if the DHS will require distribution or treatment operator certification in the treated water portion of a wholesale system's transmission system, then this should be specified in the regulations.

RESPONSE: What the commenter describes as the "treated water portion of a wholesale system's transmission system" is clearly included under the definition of "distribution system," and as such all the requirements of the regulation apply. The Department does not believe that any revision to the language is required.

COMMENT: Commenter 12 indicates that Health and Safety Code Section 106895 should be modified to allow a one-year grandparenting option for water systems in order to advance treatment operators to higher levels in the case of treatment facilities that now require higher grades of operator.

RESPONSE: Comments on the Health and Safety Code are not within the scope of this regulatory action.

COMMENT: Commenter 12 requests that the requirement of providing operator home telephone numbers on certification applications be deleted for privacy reasons.

RESPONSE: The Department does not make home telephone numbers available to the public. The Department does find it necessary to maintain such numbers in its database in order to contact operators if important issues arise regarding their certifications.

COMMENT: Commenter 13 states that application, certification, and renewal costs are high, and that in general, it is expected that utilities will be picking up most of this cost. The commenter requests that a portion of the fees should be allocated to a State training program for operators, and that such a program could minimize the cost of reviewing continuing education units.

RESPONSE: The Department does not believe the application, certification, and renewal costs are "high." The costs were based on an estimate of the costs to run the program, based largely on actual costs to run the previous treatment operator certification program. These fees are not expected to result in any "surplus" money that could be allocated to a state-run training program. The cost of reviewing continuing education units is not expected to be significant.

COMMENT: Commenter 13 requests that the State develop an annual State Water Quality report card that will report on water quality before and after initiating a mandatory certification program, and that the results be used to validate the program and identify problem areas that need more attention in training and certification examination.

RESPONSE: The Department agrees that such an endeavor could be very useful, however the practical implementation of such a report card could be as time consuming

as implementing the operator certification program itself. The Department, with the assistance of the formal stakeholders group, does intend to regularly validate the program, exams, and education requirements. The Department will work closely with the stakeholders group to address areas of concern.

COMMENT: Commenters 14 & 15 state that under the previous operator certification program transient non-community water systems (TNCWSs) that provided only disinfection as a precaution were required to employ a certified treatment operator to operate and maintain the disinfection system. The commenters indicate that under the new regulations such systems are not required to employ either a certified distribution operator or a certified treatment operator. The commenters believe such systems should be required to operate under either a certified treatment operator or a certified distribution operator. To accomplish this, the commenters propose specific language to revise the definition of “water treatment facility.”

RESPONSE: The Department and the TAC agree with the commenter and the Department has incorporated the following revision into the last sentence of Section 63750.85: “Facilities consisting of only disinfection for which no Giardia or virus reduction is required pursuant to Section 64654(a), and which are under the control of a certified distribution operator, are not included as water treatment facilities.” This revision will ensure that all TNCWSs that provide precautionary disinfection will be operated by either a certified treatment or distribution operator.

COMMENT: Commenter 19 provided comments in favor of the regulations as presented.

APPENDIX D
List of Commentators
Public Comment Period Ending April 24, 2001
R-40-00

1. Frank Beeler, City of Lodi, 23 APRIL 01.
2. Fran Forkas, City of Lodi, 23 APRIL 01.
3. Pamela Jeane, Sonoma County Water Agency, 24 APRIL 01.
4. Gayle Smalley, North Marin Water District, gsmalley@nmwd.com, 24 April 01.

Response to Public Comments on R-35-99
Period Closing February 26, 2001

Comments received from commenters 1, 2, and 4 were identical to comments received from those same commenters during the initial 45-day comment period. A summary of those comments and the Department's responses are located in Appendix C. None of those comments were relevant to the section for which comments were being solicited during the post hearing comment period.

Commenter 3 indicates that the Sonoma County Water Agency is now required to employ a T5 chief operator, as opposed to a T3 under the previous regulations. The commenter indicates that the regulation does not provide sufficient time for existing operators to get the appropriate certifications. This comment is not relevant to the section for which comments were being solicited during the post hearing comment period.

Commenter 3 also states that the operator experience requirements for certification are too limited and proposes several changes that would provide more flexibility. Again, this comment is not relevant to the section for which comments were being solicited during the post hearing comment period.

Commenter 3 is confused about the temporary certification provisions of the regulation and requests clarification. The comment is not relevant to the section for which comments were being solicited during the post hearing comment period.

Commenter 3 also asks a question about the specialized training requirements. The comment is not relevant to the section for which comments were being solicited during the post hearing comment period.